

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA



In the Matter of the Appeal of)
CARSON ESTATE COMPANY)

Appearances:

For Appellant: Louis W. Myers of O'Melveny, Tuller & Meyer:

For Respondent: Chas. J. McColgan, Franchise Tax Commissioner

O P I N I O N

This is an appeal pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Carson Estate Company against a proposed assessment of additional tax in the amount of \$1,829.06 for the year 1933, based upon the return filed for the year ended December 31, 1932. The additional assessment is due to the inclusion by the Commissioner, in the income of Appellant for the year 1932, of an item of \$58,136.71 representing gains realized during 1932 from the sale of property, and of an item of \$47,302 representing dividends received during 1932 from the Francis Lane Company.

Appellant contends that the gain realized from the sale of property in 1932 should not be included in computing its 1932 income for the purposes of the Act for the reason that the gain accrued prior to the date the Act became effective. It has attempted to show that the gain accrued prior to the effective date of the Act by presenting testimony to the effect that on January 1, 1928, a short while before the Act became effective, the property in question, which was acquired in 1914, had a value as great or greater than the amount for which it was sold in 1932.

As amended in 1933 (See Chapter 209, Statutes of 1933) Section 19 of the Act provides that

"For the purpose of ascertaining the gain derived or loss sustained from the sale or other disposition of property, real, personal or mixed, the basis shall be determined in accordance with the provisions of Section 113 of the Federal Revenue Act of 1932 which are hereby referred to and incorporated for the purpose of this section with the same force and effect as though fully set forth herein."

Section 19 further provides in subdivision (a) that "the

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gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the basis herein provided."

Section 113 of the Federal Revenue Act of 1932 referred to in the above quoted provision of Section 19 of the State Act provides that the basis for determining gain or **loss** from the sale or other disposition of property shall be the cost thereof, except that in the case of property acquired before March 1, 1913, the basis shall be cost or the value on March 1, 1913, whichever is greater.

Inasmuch as the property in question was acquired subsequent to **March 1, 1913**, it is clear, in view of the above provisions, that the cost of the property must be used as the basis for determining the amount of gain realized from the sale of the property.

It appears to be conceded that the amount realized from the sale of the property in 1932 exceeded the cost thereof by **\$58,136.71**. Accordingly, we must hold that the Commissioner acted correctly under the Act in including this amount in the income of Appellant for the year 1932 for the purpose of computing its tax liability for the year 1933.

Appellant contends that the provisions of the Act which require the above result are unfair, discriminatory and amount to a taking of property without due process of law. We must refrain from considering this argument since, in recognition of the fact that this Board is essentially an administrative body, we have adopted the policy to which we have consistently adhered of confining ourselves in appeals of this character to an interpretation and application of the relevant provisions of the law and have left the matter of the constitutionality of such provisions to the courts to determine. We might observe, however, that it would appear that the provisions in question are valid in view of the recent decision of the Supreme Court in the case of Fullerton Oil Co. v. Johnson, 89 Cal. Dec. 35, holding valid a 1931 amendment to the Act denying certain companies the right to compute depletion allowance on the basis of January 1, 1928 valuations of their property.

We now turn to the second question involved in this appeal, namely, whether the Commissioner acted correctly in including in Appellant's income for the year 1932 dividends received by it during that year from the Francis Land Co. In this connection, it is to be observed that Section 8(h) of the Act provides that in arriving at net income there may be deducted from gross income

"Dividends received during the taxable year from a bank or corporation doing business in this State' declared from income arising out of business done in this State."

In view of this provision, it would seem that if the Francis Land Company was doing business in this State during 1932 and if

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dividends in question were declared out of income arising from business done within this State, the dividends should have been allowed as a deduction from gross income. If, on the other hand, the Francis Land Company was not doing business here, or if the dividends were not declared out of income from business done in this State, it would seem that the deduction should not be allowed.

Although the record contains ~~but meagre~~ information respecting ~~the~~ Francis Land Company, it appears that the company, by its articles of incorporation, is empowered to engage in rather extensive business operations. It further appears, however, that since the fall of 1928, the activities of the company have been confined to holding stock in the Dominguez Estate Company and the income of the company has consisted entirely of dividends on the Dominguez Estate Company stock and interest on bank deposits.

The question as to what constitutes doing business within the meaning of the Act was carefully considered by this Board in the Appeal of Union Oil Associates, decided October 10, 1932. We there held that the Union Oil Associates, a corporation organized for the purpose of acquiring and holding the stock of the Union Oil Company, the activities of which were confined to the acquiring and holding of such stock, and the income of which consisted of dividends on the stock held by it, plus a small amount of stock transfer fees, was a business corporation doing business within the state within the meaning of the Act. The Supreme Court, however, took a different view when the matter came before it and held that the company was not a business corporation doing business within the state. See Union Oil Associates vs. Johnson, 89 Cal. Dec. 402.

Although the Francis Land Company differs from the Union Oil Associates in that it is ~~empowered to~~ engage in general business operations whereas the Union Oil Associates was ~~organize~~ primarily for the purpose of acquiring and holding stock, the actual activities of the two companies are sufficiently similar in character to force us to the conclusion that if the Union Oil Associates was not doing business, the Francis Land Company has not done business within the meaning of the Act since the effective date thereof. Accordingly, we are of the opinion that the dividends received by the Appellant from the Francis Land Company during 1932 are not deductible from gross income under Section 8(h) of the Act.

For the above reasons we must hold that the Commissioner acted properly in overruling the protest of the Appellant to the proposed additional assessment in question.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the action

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of Chas. J. McColgan, Franchise Tax Commissioner? in overruling the protest of Carson Estate Company, a corporation, against a proposed assessment of an additional tax in the amount of \$1,829.06 based upon the return of said corporation for the year ended December 31, 1932, pursuant to Chapter 13, Statutes of 1929, as amended, be and the same is hereby sustained.

Done at Sacramento, California, this 1st day of October, 1935, by the State Board of Equalization.

R. E. Collins, Chairman
John C. Corbett, Member
Fred E. Stewart, Member
Orfa Jean Shontz, Member
Ray L. Riley, Member

ATTEST: Dixwell L. Pierce, Secretary